



# CERTUS ERASURE

## END USER LICENCE AGREEMENT

### EULA

#### IMPORTANT

This End User Licence Agreement (“EULA”) is a legal agreement between Certus Software GmbH (“Certus”, “us”) and you (“End User”) for the Certus Erasure software (the “Software”). When you download, install, store on a data carrier, copy or use the Software you agree to the terms and conditions contained in the EULA.

#### 1 Licence

1.1 Subject to the terms of this EULA and payment of the Licence Fee, Certus grants the End User a non-exclusive and non-transferable licence to install and use the Software.

#### 2 Limitations on use

- 2.1 Except as expressly permitted under this EULA or by law, the End User shall not:
- 2.1.1 use, copy, modify, adapt, correct errors, or create derivative works from, the Software;
  - 2.1.2 decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Software;
  - 2.1.3 assign, sub-licence, lease, resell, distribute or otherwise deal in or encumber the Software;
  - 2.1.4 remove or modify any copyright or similar notices, or any of Certus’s or any other person’s branding, that the Software causes to be displayed when used or that is displayed in the set of documentation available for download or on the Certus web manager and containing instructions on how to use the Software and detailing any specific user requirements or restrictions relating to the Software (the “User Manual”) or on any packaging accompanying the Software if delivered on physical media; or
  - 2.1.5 attempt to circumvent or interfere with any security features of the Software.
- 2.2 The End User shall install and use the Software at all times in accordance with the User Manual and all other terms of this EULA.
- 2.3 The End User shall be permitted to use the Software in machine-readable object code form only.
- 2.4 The End User shall notify Certus in writing as soon as it becomes aware of any actual or suspected unauthorised installation or use of the Software.



### **3 Delivery and installation**

- 3.1 Certus shall use reasonable endeavours to deliver the Software to the End User in the manner set out in clause 3.2 or 3.3 or as otherwise agreed in writing.
- 3.2 If the Software is to be delivered to the End User on physical media, the risk in the media shall pass to the End User when it is dispatched by Certus.
- 3.3 If the Software is to be made available for download by the End User, Certus shall notify the End User when the Software is ready to be downloaded onto physical media and shall provide all reasonable instructions, including any necessary activation codes or licence keys. It is the End User's responsibility to ensure that its computer system and network connection is capable of downloading the Software.
- 3.4 Unless otherwise agreed in writing, the End User shall be responsible for installing the Software in accordance with the instructions provided by Certus.
- 3.5 Where the Software is activated using physical media supplied by Certus or when login into an account, one licence will automatically be deducted from the physical media or account logged into on each use of the Software by an End User. Once used on a relevant device, the licence for the Software used by the End User cannot be used again as its utility is a one-time use.

### **4 Support and maintenance**

- 4.1 The Customer shall be entitled to receive a software maintenance update, patch or bug-fix provided by Certus pursuant to its warranty and other express obligations under this EULA.
- 4.2 Support for the Software is available at <https://support.certus.software>, or such other website or ticketing system used by Certus, during Certus's normal business hours.
- 4.3 Any services provided by the Certus to the End User other than as expressly provided for under this EULA shall be charged to the End User at Certus's standard charges for such services in force from time to time.

### **5 User Manual**

- 5.1 Certus shall provide or make available the User Manual. Any help files supplied with the Software and information on the Certus's websites or with or on physical media shall be deemed to form part of the User Manual.
- 5.2 The User Manual shall be updated by Certus from time to time in such manner as Certus sees fit. Where updates to the User Manual are made available online or on Certus web accounts, Certus shall not be obliged to provide updated hard copy versions of the User Manual, which shall be deemed to incorporate the online updates from the date on which they are made available.

### **6 Warranty**

- 6.1 Certus warrants that the Software shall operate materially in accordance with the User Manual when used in accordance with this EULA for 60 days from the date the Software is made available for download or delivered (the Warranty Period).
- 6.2 If there is a breach of the warranty in clause 6.1, provided the End User notifies it in writing within the



Warranty Period and provides sufficient information to enable Certus to reproduce any errors, Certus shall, at its option:

- 6.2.1 use reasonable endeavours to correct the errors in the Software within a reasonable time; or
  - 6.2.2 terminate this EULA and refund any licence fees already paid by the End User.
- 6.3 The warranty in clause 6.1 is subject to the End User complying with its obligations under this EULA and is also subject to the limitations set out in clause 8. In addition, the warranty shall not apply to the extent that any error in the Software arises as a result of:
- 6.3.1 incorrect operation or use of the Software (including any failure to follow the User Manual);
  - 6.3.2 installation or use of the Software other than for the purposes for which it is intended;
  - 6.3.3 modification or alteration of the Software without the written consent of Certus;
  - 6.3.4 installation or use of the Software with other software or on equipment with which it is incompatible (unless Certus in writing recommended or required the use of that other software or equipment); or
  - 6.3.5 failure to install any update recommended and made available by Certus.
- 6.4 The End User acknowledges that no liability or obligation is accepted by Certus (howsoever arising whether under contract, tort, in negligence or otherwise):
- 6.4.1 in relation to any software programme that is not Certus software but which is supplied to the End User under this EULA ("Third Party Software");
  - 6.4.2 that the Software shall meet the End User's individual needs, whether or not such needs have been communicated to Certus;
  - 6.4.3 that the operation of the Software shall not be subject to minor errors or defects; or
  - 6.4.4 that the Software shall be compatible with any software other than the Third Party Software or with any particular hardware or equipment.
- 6.5 Subject to clause 8.5, the provisions of clauses 6.2 and 7 set out the End User's sole and exclusive remedy (howsoever arising, whether in contract, tort, negligence or otherwise) for any breach of the warranty in clause 6.1 or for any other error or defect in, defective performance or inability to use the Software or any part of it.
- 6.6 Other than as set out in this clause 6, and subject to clause 8.5, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose, reasonable skill and care or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

## **7 Intellectual Property Rights**

- 7.1 Subject to clauses 7.2 and 7.6, Certus shall:
  - 7.1.1 defend at its own expense any claim brought against the End User by any third party alleging that the End User's use of the Software infringes any copyright, database right or registered trade mark,



- registered design right or registered patent the European Economic Area or, where permission is given in writing, worldwide (an IP Claim); and
- 7.1.2 pay, subject to clause 7.3, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.
- 7.2 The provisions of clause 7.1 shall not apply unless the End User:
- 7.2.1 promptly notifies Certus upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
- 7.2.2 makes no comment or admission and takes no action that may adversely affect Certus's ability to defend or settle the IP Claim;
- 7.2.3 provides all assistance reasonably required by Certus; and
- 7.2.4 gives Certus sole authority to defend or settle the IP Claim as Certus considers appropriate.
- 7.3 The provisions of clause 8 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under clause 7.1.
- 7.4 If the Software is or is likely to become subject to an IP Claim, Certus shall use reasonable endeavours to:
- 7.4.1 obtain the right for the End User to continue to use the Software; or
- 7.4.2 replace or modify the Software (or the part of it subject to the IP Claim) so that it becomes non-infringing without materially affecting the functionality of the Software set out in the User Manual.
- 7.5 If Certus is unable to achieve either of the outcomes described in clause 7.4 having used reasonable endeavours (including where the costs of doing so are commercially prohibitive) or otherwise elects to proceed under this clause 7.5 then, on receiving written notification from Certus, the End User shall promptly uninstall the Software or return to Certus any physical media on which the Software is installed and this EULA shall immediately terminate. Certus shall refund the End User on a pro-rata basis for any unused proportion of Licence Fees paid in advance. This clause 7.5 is without prejudice to the End User's rights and remedies under clauses 7.1.
- 7.6 Certus shall have no liability or obligation under this clause 7 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:
- 7.6.1 any modification of the Software without Certus's express written approval signed by a director of Certus;
- 7.6.2 installation or use of the Software otherwise than in accordance with this EULA, the User Manual or Certus's instructions; or
- 7.6.3 installation or use of the Software in combination with any software, hardware or data that has not been supplied or expressly authorised by Certus.
- 7.7 Subject to clause 8.5, the provisions of this clause 7 set out the End User's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.
- 7.8 Except for the rights to install and use the Software and the User Manual expressly granted in this EULA, the End User shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of



whatever nature in the Software, User Manual or in any copies of them and no Intellectual Property Rights of either party are transferred or licensed as a result of this EULA.

## **8 Limitation of liability**

- 8.1 The extent of Certus's liability under or in connection with this EULA (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 8.
- 8.2 Subject to clause 8.5, Certus's total aggregate liability howsoever arising under or in connection with this EULA shall not exceed the licence fee paid by the End User for the Software.
- 8.3 Subject to clause 8.5, Certus shall not be liable for consequential, indirect or special losses.
- 8.4 Subject to clause 8.5, Certus shall not be liable for any of the following (whether direct or indirect):
- 8.4.1 loss of profit;
  - 8.4.2 loss or corruption of data;
  - 8.4.3 loss or corruption of software or systems;
  - 8.4.4 loss or damage to equipment;
  - 8.4.5 loss of use;
  - 8.4.6 loss of production;
  - 8.4.7 loss of contract;
  - 8.4.8 loss of opportunity;
  - 8.4.9 loss of savings, discount or rebate (whether actual or anticipated); and/or
  - 8.4.10 harm to reputation or loss of goodwill.
- 8.5 Notwithstanding any other provision of this EULA, Certus's liability shall not be limited in any way in respect of the following:
- 8.5.1 death or personal injury caused by negligence;
  - 8.5.2 fraud or fraudulent misrepresentation; or
  - 8.5.3 any other losses which cannot be excluded or limited by applicable law.

## **9 Term and termination**

Certus may terminate this Agreement at any time by giving notice in writing to the End User if the End User commits a material breach of this EULA and such breach is not remediable.

## **10 Consequences of termination**



10.1 Immediately on termination of this EULA (for any reason), the licences and rights granted by the Certus shall terminate and the End User shall:

10.1.1 stop using and uninstall the Software; and

10.1.2 destroy and delete or, if requested by Certus, return any copies of the User Manual, the Software and any physical media of the Software.

## 11 Entire agreement

11.1 This EULA constitutes the entire agreement between Certus and the End User and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.

11.2 Each party acknowledges that it has not entered into this EULA in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this EULA.

11.3 Nothing in this EULA shall limit or exclude any liability for fraud.

## 12 Notices

12.1 Any notice given by a party under this EULA shall be: in English;

12.2 All notices from the End User to Certus must be in writing and sent to Certus Software GmbH for the attention of the Managing Director at Karl-Nolan Strasse 3, 86157 Augsburg, Germany.

12.3 All notices from us to the End User will be displayed on our website or web manager platform from time to time.

## 13 Variation

No variation of this EULA shall be valid or effective unless it is in writing, refers to this EULA and is duly signed or executed by, or on behalf of, each party.

## 14 Severance

14.1 If any provision of this EULA (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this EULA shall not be affected.

14.2 If any provision of this EULA (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## 15 Waiver

15.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or



under this EULA shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

- 15.2 No single or partial exercise of any right, power or remedy provided by law or under this EULA shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 15.3 A waiver of any term, provision, condition or breach of this EULA shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

## **16 Governing law**

This EULA and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

## **17 Jurisdiction**

Certus and the End User irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this EULA, its subject matter or formation (including non-contractual disputes or claims).